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Subject: BOE edits to Draft Consent Order
Date: Wednesday, September 12, 2018 10:03:23 AM
Attachments: [BOE Consent Decree edits p43-52.docx](#)
[BOE order for compliance edits p65-70.docx](#)

Clarissa—

To facilitate our call, enclosed are BOE's suggested edits to the "Order for Compliance" section starting on page 10 of the AOC. We are primarily requesting:

- An additional 30 days (a total of 60 days) to complete most of the roof repairs
- Modifying the mixer provisions so that the mixer-related leaks are all repaired in 30 days and BOE submits a report proposing to either shut down, repair, or reduce the mixers themselves pursuant to a proposed schedule
- Needed clarifications on BOE's measures to respond to the concerns with employees walking on the roof near the PRV's

With regard to the last section on "stipulated penalties," BOE has the following concerns that we would like to discuss. First, how does paragraph 74 with the fenceline stipulated penalties account and respond to the existing background levels of H2S emissions from numerous other industrial sources in the area. As you know, TRS data from the former South Sioux city monitoring station (before BOE's operations) for 2007 through 2010 indicate that background levels of H2S for South Sioux City during this time period were on the order of 0.002 ppm as a 30-minute average with maximum 30-minute averages that ranged from 0.003 to 0.025 ppm. Based on this information, at a minimum, the trigger levels for stipulated penalties should be modified so that BOE is not unfairly penalized for background H2S emissions in the Order.

Second, the amount of the stipulated penalties for each exceedance is dramatically greater than the calculations EPA has applied in other settlements involving H2S. What is the basis for those penalties? For example, below is a chart from a 2017 settlement with Lima Refining Company in which EPA applied the following stipulated penalties from exceedances of H2S emissions.

78.k. <u>Violation of Paragraph B22.</u> Failure to comply with the H2S emission limit at a Covered Flare after that Covered Flare is required to comply with 40 C.F.R. Part 60, Subpart J, or 40 C.F.R. Part 60, Subpart Ja.	On a per covered flare basis, hours (on a three-hour rolling average basis) per calendar quarter <u>in noncompliance</u>	Penalty per hour per Covered Flare
	Hours 1-50.0	\$ 50
	Hours 51-100.0	\$ 100
	Hours over 100.0	\$ 200
	For purposes of calculating	

	the number of hours of noncompliance with the H2S limit, all one-hour periods of violation shall be added together to determine the total. The averaging period for this standard is a three-hour rolling average.	
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Finally, BOE disagrees with several of certain violations set forth in the signed Notice and findings of Violation, which are repeated verbatim in the draft Administrative Order for Compliance. If BOE were to sign the current Administrative Order, then it would unfairly incur unintended adverse impacts, including from other third parties in litigation using the Administrative Order as arguably constituting an admission by BOE. Accordingly, we have drafted new paragraph 82 and modified paragraph 83 to help address some of our concerns.

In paragraphs 41-43 the current language implies (or could be read to imply) that employees actually breathed in the high H2S levels as opposed to the fact that they were wearing monitors to ensure they put on protective respirators as required under OSHA. We propose more accurate language in the enclosed red-line edits for the paragraphs identified above.

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